

1301 K Street N.W.
Suite 600, East Tower
Washington, D.C. 20005
202.408.6400
202.408.6399 fax
www.sonnenschein.com

Chicago
Kansas City
Los Angeles
New York
San Francisco
St. Louis
Washington, D.C.

Lisa C. Creighton
(816) 460-2461
l3c@sonnenschein.com

December 11, 2000

VIA HAND-DELIVERY

Commission Secretary
Magalie Roman Salas
445 12th Street, S.W., CY-B402
Washington, DC 20554

RECEIVED

DEC 11 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Reply Comments Provided by Ionex Communications, Inc. in Opposition to
Southwestern Bell Telephone Company's Request for Authorization Under
Section 271 of the Communications Act to Provide In-Region, InterLATA
Service in the State of Kansas
CC Docket No. 00-217

Dear Ms. Salas:

Enclosed for filing with the Commission is the original and one copy of the above-referenced document. The required copies of this document have been sent to the Common Carrier Bureau and the International Transcription Service.

Please return one file-stamped copy of this document in the envelope enclosed for that purpose. If you should have any question, please do not hesitate to contact me. Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Lisa C. Creighton
(LPC)

Lisa C. Creighton

LCC/cmw
Enclosures

cc: Janice Myles (w enclosures)
International Transcription Service (w/enclosure)

No. of Copies rec'd 0
List ABCDE

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

DEC 11 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
Joint Application by SBC Communications)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications) CC Docket NO. 00-217
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region,)
InterLATA Services in Kansas and Oklahoma)

**REPLY COMMENTS PROVIDED BY IONEX COMMUNICATIONS, INC.
IN REPLY TO EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE**

Communications with respect to this document should be addressed to:

Mark P. Johnson
Lisa C. Creighton
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, Missouri 64111

and

Sue E. Weiske
General Counsel
Ionex Telecommunications, Inc.
5710 LBJ Freeway, Suite 215
Dallas, Texas 75207
Telephone: (972) 392-0306
Facsimile: (972) 392-0654

December 11, 2000

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	ANY EVALUATION OF UNE PRICING IN KANSAS MUST INCLUDE PRICES ACTUALLY PAID BY CLECs.....	3
III.	THE KCC HAS ALREADY DETERMINED THAT SOME OF THE UNE PRICES SET IN THE GENERIC UNE DOCKET ARE NOT COST-BASED.....	4
IV.	CONCLUSION.....	8

I. INTRODUCTION

Ionex Communications, Inc. (“Ionex”) files these comments in reply to the evaluation of the United States Department of Justice (“DOJ”) submitted in this docket. In its evaluation, the DOJ urges this Commission to make an independent evaluation of the unbundled network elements (“UNE”) rates in Kansas as it believes the rates set by the Kansas Corporation Commission (“KCC”) in the Kansas Generic UNE docket are too high. Ionex strongly concurs with the DOJ but believes that any evaluation must also include the substantially higher prices actual paid by CLECs, such as Ionex. Furthermore, Ionex identifies several cases relating to UNE pricing for Digital Subscriber Line (“DSL”) services in which the KCC itself determined that the UNE rates set in the Kansas Generic UNE docket are non-TELRIC compliant, unlawful, unjust, unreasonable and discriminatory.

II. ANY EVALUATION OF UNE PRICING IN KANSAS MUST INCLUDE PRICES ACTUALLY PAID BY CLECS

The DOJ is correct in its assessment, this Commission should make an independent evaluation of the prices for unbundled network elements (“UNEs”) in Kansas, to determine if they are properly cost based. In making this evaluation, this Commission should not only review the UNE rates set in the KansasGeneric UNE docket,¹ but also the UNE rates that SWBT contends that CLECs should be paying pursuant to existing interconnection agreements. As stated in Ionex’s initial Comments, while Ionex’s predecessor clearly thought that SWBT was offering the prices that were to be determined by the Kansas Corporation Commission (“KCC”) in the Kansas Generic UNE docket, SWBT continue to maintain that it has no legal obligation to offer those rates to CLECs with existing agreements or CLECs who are unaware of the Generic

¹ Docket No. 97-SCCC-149-GIT

UNE docket. Instead, SWBT contends that Ionex should have been paying rates 300 percent higher than the questionable rates set in the Kansas Generic UNE docket. While Ionex strongly believes that SWBT's position is incorrect and Ionex has initiated a complaint (expending considerable time and resources) before the KCC just to get the Generic UNE rates that have been questioned by the DOJ, SWBT's actions clearly indicate that this Commission needs to look at more than the rates set in the Generic UNE docket to get an accurate picture of the true extent to which UNE rates are not cost-based in Kansas. Any evaluation must include the *actual* rates being paid by CLECs in Kansas. To assist the Commission in this evaluation, Ionex refers the Commission to the UNE attachment from its Kansas interconnection agreement with SWBT under which Ionex operated until November of this year. (See Exhibit A to Ionex's Complaint attached at Exhibit A to Ionex's original Comments).

**III. THE KCC HAS ALREADY DETERMINED THAT SOME OF
THE UNE PRICES SET IN THE GENERIC UNE DOCKET
ARE NOT COST-BASED**

Ionex believes that an examination of the regulatory history of xDSL services in Kansas also supports the DOJ's request for an independent evaluation of UNE prices in Kansas. To date, there have been two arbitrations relating to DSL/Line Sharing services. In the first arbitration, *In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Southwestern Bell Telephone Company*, Docket No. 00-DCIT-389-ARB, the petitioner, Covad, asked the KCC to set TELRIC compliant recurring and non-recurring rates for 2-wire ISDN Digital Subscriber Line loop, non-recurring rates for loop qualification, and non-recurring rates for 2-wire analog and digital cross connects and ADSL

shielded cross connects. In the arbitration, SWBT challenged a CLEC's right to request arbitration of these rates, arguing that all CLECs were bound by the rates set in the Generic UNE docket, both recurring and non-recurring. Eventually, the KCC rejected SWBT's challenge, finding that in some circumstances CLECs are entitled to arbitrate the rates set by the KCC in the Generic UNE docket.

In the arbitration, the Arbitrator rejected all the challenged rates from the Generic UNE docket, holding that they were based on non-TELRIC compliant cost studies. (See Arbitrator's Order, May 9, 2000, Docket No. 00-389-ARB).² Furthermore, the Arbitrator found that the rates set in the Generic UNE docket would result in CLECs paying prices that were **substantially too high**. (See Arbitrator's Order issued May 9, 2000 at page 16 (emphasis added)). The Arbitrator ordered SWBT to rerun its cost studies to bring them in compliance with TELRIC. Finally, the Arbitrator found that it was unlawful, unjust, unreasonable and discriminatory to subject CLECs to non-TELRIC compliant rates while SWBT reran the loop studies. (Id. at 17). Therefore, the Arbitrator set rates that were more comparable to other states and, based on the evidence, TELRIC compliant. The Arbitrator's findings and rates were accepted by the KCC. (See Order Affirming Arbitrator's Recommendation Setting Interim Rates, July, 28, 2000, Docket No. 00-DCIT-389-ARB). To date, SWBT has not rerun its cost study and Covad has not filed an interconnection agreement with SWBT that other CLECs could adopt. Therefore, SWBT continues to offer the Generic UNE rates to the majority of CLECs.³

² Within this reply, Ionex will cite to various KCC orders and pleadings. The orders and pleading are all available through the KCC's website at www.KCC.state.ks.us/ through the "Docket Filings" selection.

³ For about one month, SWBT has offered the DSL arbitration rates in its DSL attachment to the K2A Interconnection Agreement. SWBT is now trying to withdraw the Covad arbitration

The following chart demonstrates the substantial differences between rates set in the Generic UNE docket and those established in the DSL arbitration:

RECURRING RATES

	DSL ARBITRATION RATES	GENERIC UNE RATES⁴
Zone 1A - Rural	\$32.21	\$40.69
Zone 2B - Suburban	\$18.82	\$29.50
Zone 3C - Urban	\$16.37	\$32.60

INITIAL NON-RECURRING RATES:

	DSL ARBITRATION RATES	GENERIC UNE RATES
Zone 1A - Rural	\$15.03	\$72.50
Zone 2B - Suburban	\$15.03	\$72.50
Zone 3C - Urban	\$15.03	\$72.50
2-Wire Analog Cross Connect	\$17.29	\$26.70 ⁵
2-Wire Digital Cross Connect	\$17.29	\$26.70
Loop Qualification	\$0	\$10.00 ⁶

ADDITIONAL NON-RECURRING RATES:

	DSL ARBITRATION RATES	GENERIC UNE RATES
Zone 1A - Rural	\$6.22	\$37.75
Zone 2B - Suburban	\$6.22	\$37.75

rates through a proposed amendment to Attachment 25 xDSL to the K2A Interconnection Agreement. See page 8 herein for a further explanation of this situation.

⁴ These rates are taken from February 19, 1999, September 19, 1999 and November 3, 2000 Orders in Docket No. 97-SCCC-149-GIT.

⁵ By way of further comparison, SWBT is arguing that through October 2000, Ionex should have been paying \$72.50 for the initial non-recurring fee for the 2-Wire Analog and Digital Cross Connects, 4 times the amount of the DSL Arbitrations and almost three times the Generic UNE rates.

⁶ SWBT takes the position that it is entitled to charge for manual loop qualification despite the Arbitrator's clear finding that such a charge was not consistent with TELRIC principles and the only TELRIC compliant rate was \$0. (See Arbitrator's Order, May 11, 2000 at p. 20, Docket No. 00-DCIT-389-ARB).

Zone 3C - Urban	\$6.22	\$37.75
2-Wire Analog Cross Connect	\$17.29	\$25.55 ⁷
2-Wire Digital Cross Connect	\$17.29	\$25.55
Loop Qualification	NA	NA

In the second DSL/Line Sharing arbitration, *In the Matter of the Petition of (DIECA Communications, Inc.) Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements for Line-Sharing With Southwestern Bell Telephone Company*, Docket No. 00-DCIT-997-ARB, the Arbitrator and the KCC affirmed the rates set in the first Covad arbitration. (See Arbitrator's Order, July 21, 2000 and Order Affirming Arbitrator's Recommendation Setting Interim Rates, August 8, 2000). However, as mentioned above, SWBT and Covad have not filed an interconnection agreement.

On July 21, 2000, the KCC opened a generic docket to address the conditions, terms and rates for digital subscriber line UNEs in Kansas (hereinafter "the Generic xDSL docket").⁸ Subsequently, in that docket, the KCC ordered SWBT to make available to CLECs on an interim basis the rates, terms and conditions determined in the two DSL Arbitrations. (See Order 5: Prehearing Conference Order, September 13, 2000 at ¶ 8). Almost two months later, SWBT began offering the DSL arbitration rates as part of its DSL Attachment in its K2A Interconnection Agreement. As noted by the DOJ, on November 3, 2000, the KCC issued an order in the Generic UNE docket affirming the non-recurring rates it set earlier, many of which were rejected in the DSL Arbitrations. (See Order Regarding Non-Recurring Charges for

⁷ By way of further comparison, SWBT is arguing that through October 2000, Ionex should have been paying \$69.05 for the additional non-recurring fee for the 2-Wire Analog and Digital Cross Connects, again, almost 4 times the amount of the DSL Arbitrations and almost three times the Generic UNE rates

Unbundled Network Elements, November 3, 2000, Docket No. 97-SCC-149-GIT). In the November Order, the KCC affirmed SWBT rates that it had determined in the DSL arbitrations to be non-TELRIC compliant, unlawful, unjust, unreasonable and discriminatory.

On December 5, 2000, SWBT submitted proposed revisions to Attachment 25, xDSL to its K2A Interconnection Agreement seeking to replace the DSL Arbitration rates with the non-TELRIC compliant rates set in the November Order in the Generic UNE docket. (See December 5, 2000 letter to Jeff Wagaman from April Rodewald submitted in Docket No 97-411-GIT). As the chart above depicts, these rates are up to five times greater than the rates set in the DSL Arbitrations. DATA CLECs have filed an objection to these proposed revisions. However, the KCC has not resolved the conflict between the Generic UNE docket and the Generic DSL docket.

IV. CONCLUSION

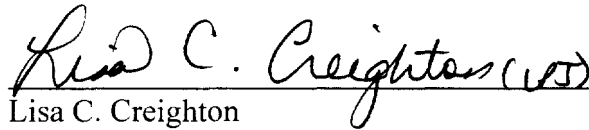
As demonstrated above, there are strong reasons, which include the KCC's own determinations, to believe that the rates set in Kansas Generic UNE docket are not cost-based. Further, there are strong reasons to believe that SWBT is charging many CLECs prices that are even higher than the questionable rates set in the Kansas Generic UNE docket. Based on these facts, Ionex joins the DOJ in urging this Commission to make an independent evaluation of the prices for UNEs in Kansas to determine if they are cost-based. Ionex maintains that if such an evaluation is performed, this Commission will find that the actual UNE rates paid by CLECs in Kansas are not cost-based.

⁸ Docket No. 01-GIMT-032-GIT.

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL

A handwritten signature in cursive script, reading "Lisa C. Creighton (vss)". The signature is written in black ink and is positioned above the printed name.

Lisa C. Creighton
4520 Main Street, Suite 1100
Kansas City, Missouri 64111
Telephone: (816) 460-2400
Facsimile: (816) 531-7545

ATTORNEYS FOR
IONEX COMMUNICATIONS, INC.

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

VERIFICATION

STATE OF MISSOURI)
) ss:
COUNTY OF JACKSON)

I, Lisa C. Creighton, of lawful age, being first duly sworn upon my oath, state:

I am an attorney for Ionex Communications, Inc.; I have read the above and foregoing Comments Provided by Ionex Communications, Inc. in Reply to Evaluation of the United States Department of Justice, and, upon information and belief, state that the matters therein appearing are true and correct.



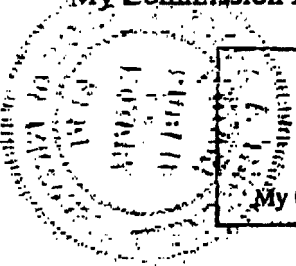
Lisa C. Creighton

Subscribed and sworn to before me this 11th day of December, 2000.



Notary Public

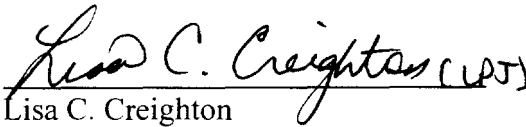
My Commission Expires:


BARBARA A. THRELKELD
Notary Public - Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires: Feb. 20, 2001

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and accurate copy of the foregoing Comments Provided by Ionex Communications, Inc. in Reply to Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery or electronic mail on December 11, 2000.

A handwritten signature in black ink, reading "Lisa C. Creighton (LST)". The signature is written in a cursive style with a horizontal line underneath the name.

Lisa C. Creighton
Attorney
Sonnenschein Nath & Rosenthal

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

Service List

Chairman William E. Kennard Commissioner Harold W. Furchtgott-Roth Commissioner Susan Ness Commissioner Michael K. Powell Commissioner Gloria Tristani Magalie Roman Salas, Secretary Federal Communications Commission 445 12 th St. SW Washington, DC 20554	Dorothy Atwood Chief, Common Carrier Bureau Federal Communications Commission 445 12 th Street, SW Washington, DC 20554
Janice Myles Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission Room 5-B-145 445 12 th Street, SW Washington, DC 20554	Glen Reynolds Associate Bureau Chief Common Carrier Bureau Federal Communications Commission 445 12 th Street, SW Washington, DC 10554
John Stanley Common Carrier Bureau Federal Communications Commission 445 12 th Street, SW Washington, DC 20554	James D. Ellis Paul M. Mancini Martin E. Grambow SBC Communications, Inc. 175 E. Houston San Antonio, TX 78205
Michelle Carey Chief, Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission 445 12 th Street, SW Washington, DC 20554	Michael K. Kellogg Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. 1301 K St., NW Suite 1000 West Washington, DC 20005 Counsel for SBC
Kathy Farroba Deputy Chief Policy and Program Planning Division Federal Communications Commission 445 12 th Street, SW Washington, DC 20554	Antony Petrilla Swidler Berlin Shereff Friedman, LLP 3000 K Street, NW, Suite 300 Washington, DC 20007-5116 Counsel for Adelphia
Robert W. McCausland Vice President, Regulatory and Interconnection Alliance Telecom, Inc. 1950 Stemmons Freeway, Suite 3026 Dallas, TX 75207-3118	Jonathan Askin General Counsel ALTS 888 17 th Street, NW, Suite 900 Washington, DC 20006

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

Jerome L. Epstein Jenner & Block 601 13 th St. NW, Suite 1200 Washington, DC 20005 Counsel for MCI WorldCom	Geraldine Mack AT&T Corporation 295 North Maple Ave. Basking Ridge, NJ 07920
Keith L. Seat Mary L. Brown MCI WorldCom, Inc. 1801 Pennsylvania Ave., NW Washington, DC 20006	Mark E. Haddad Ronald S. Flagg Peter D. Keisler David L. Lawson Sidley and Austin 1722 Eye Street, NW Washington, DC 20006 Counsel for AT&T Corporation
Karen Nations Senior Attorney Metromedia Fiber Network Services, Inc. One Meadowlands Plaza East Rutherford, NJ 07073	David J. Newburger Newburger & Vossmeier One Metropolitan Square, Suite 2400 St. Louis, MO 63102 Counsel for Campaign for Telecommunications Access
A. Renee Callahan Willkie Farr & Gallagher Three Lafayette Centre 1155 21 st St. NW Washington, DC 20036 Counsel for Sprint	ITS, Inc. 1231 20 th St. NW Washington, DC 20036
Brad E. Mutschelknaus Ross A. Buntrock Kelley Drye & Warren LLP 1200 19 th Street, NW, Suite 500 Washington, DC 20036 Counsel for e.spire	Bret Lawson Eva Powers Janet Buchanan Kansas Corporation Commission 1500 S.W. Arrowhead Road Topeka, KS 66604-4027
Michael J. Shortley, III Associate General Counsel Global Crossing Telecommunications, Inc. 180 S. Clinton Ave. Rochester, NY 14646	Joyce Davidson Oklahoma Corporation Commission Jim Thorpe Office Building Post Office Box 52000-2000 Oklahoma City, OK 73152-2000
Kevin Hawley Swidler Berlin Shereff Friedman, LLP 3000 K St. NW, Suite 300 Washington, DC 20007 Counsel for KMC Telecom	Commissioner Bob Anthony Oklahoma Corporation Commission Jim Thorpe Office Building Post Office Box 52000-2000 Oklahoma City, OK 73152-2000

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

Terry J. Romine Director of Legal and Regulatory Affairs Adelphia Business Solutions, Inc. One N. Main Street Coudersport, PA 16195	Commissioner Ed Apple Oklahoma Corporation Commission Jim Thorpe Office Building P. O. Box 52000-2000 Oklahoma City, OK 73152-2000
Howard Siegel Vice President of Regulatory Policy IP Communications Corporation 17300 Preston Road, Suite 300 Dallas, TX 75252	Commissioner Denise Bode Oklahoma Corporation Commission Jim Thorpe Office Building P. O. Box 52000-2000 Oklahoma City, OK 73152-2000
Genevieve Morelli Andrew M. Klein Kelley Drye and Warren LLP 1200 19 th Street, N.W. Washington, DC 20036 Counsel for KMC Telecom	Commissioner Cynthia Claus Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027
David R. Conn Deputy General Counsel & VP Richard S. Lipman Associate General Counsel McLeodUSA Incorporated McLeodUSA Technology Park 6400 C Street, SW Cedar Rapids, Iowa 52406-3177	Commissioner Brian Moline Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027
Chair John Wine Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027	Michael Donohoe Vice President-Legal Joann Russell Director-LEC Relations McLeod USA Incorporated CapRock Communications Corp. 15601 Dallas Parkway - Suite 700 Dallas, TX 75001
Patrick J. Donovan D. Anthony Mastando Swidler Berlin Shereff Friedman, LLP 300 K Street, NW Suite 300 Washington, DC 20007 Counsel for Focal Communications	Patricia Ana Garcia Escobedo ConnectSouth Communications, Inc. 9600 Great Hills Trail 250E Austin, TX 78759

Submitter: Ionex Communications, Inc.
Applicant: SBC Communications, Inc.
State: Kansas

Merle R. Blair President & CEO Greater Topeka Chamber of Commerce 120 SE 6 th Avenue, Suite 110 Topeka, KS 66603-3515	Mary C. Albert Morton J. Posner Regulatory Counsel Allegiance Telecom, Inc. 1150 Connecticut Ave., NW Suite 205 Washington, DC 20036
Carrington F. Philip Vice President, Regulatory Affairs Donald J. Crosby Senior Counsel Cox Communications 1400 Lake Hearn Drive, NE Atlanta, GA 30319	Gene Spineto Telecommunications Manager Environmental Management Inc. Post Office Box 700 Guthrie, OK 73044-0700
Walker Hendrix Citizens' Utility Ratepayers Board (CURB) 1500 SW Arrowhead Road Topeka, KS 66604-4027	Jane Van Duzer Senior Counsel Focal Communicatins Corp. 200 North LaSalle Street Suite 1100 Chicago, IL 60601
Pace A. Duckenfield Counsel Allegiance for Public Technology 919 18 th Street, NW, Suite 900 Washington, DC 20006	Donald J. Russell, Chief Antitrust Division U.S. Department of Justice 1401 H. Street, NW, Suite 8000 Washington, DC 20530